

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OHIO STATE CONFERENCE OF THE	:	
NATIONAL ASSOCIATION FOR THE	:	
ADVANCEMENT OF COLORED PEOPLE, et	:	Case No. 2:14-cv-00404
al.,	:	
	:	
Plaintiffs,	:	Judge Peter C. Economus
	:	
v.	:	Magistrate Judge Norah McCann King
	:	
JON HUSTED, et al.,	:	<u>RULE 26(A)(2)(B) EXPERT</u>
	:	<u>REBUTTAL DECLARATION OF</u>
Defendants.	:	<u>PAUL GRONKE, PhD</u>
	:	
	:	

I. Introduction

1. I am Paul W. Gronke, Professor of Political Science at Reed College and Director of the Early Voting Information Center. I received a BA in Political Science from the University of Chicago; a Master's Degree in Western European Politics from the University of Essex, Colchester, UK; and a PhD in Political Science from the University of Michigan. I have published scientific research on early voting, early voting and election administration, and voting behavior, along with other topics, in peer-reviewed scientific journals, university press books, edited volumes, college textbooks, and policy reports. I serve as the primary editor of the *Election Law Journal*, the only interdisciplinary journal dedicated to the study of election law, policy, and politics. I am the only political scientist to have served in this role. The principal focus of my research and writing since 2006 has been early voting.

2. I created the Early Voting Information Center (EVIC) in 2006 as a non-partisan center for the study of non-precinct place voting in the United States. EVIC has attracted more than \$500,000 in funding from public charities, non-profits, state governments, and federal agencies. As the Director of EVIC, I study early voting, but I do not advocate for or against early voting. Rather, I search for common sense, non-partisan solutions to identified problems with election administration that are backed by solid empirical evidence and tailored to the conditions of the

time and jurisdiction, which may or may not include the administration of early voting. I have helped local jurisdictions, states, and the federal government better understand the changes wrought by the growth in early in-person voting, no-excuse absentee voting, and voting by mail.

3. I have published a number of articles that contain statistical analyses of national trends and regional trends in early voting and the demographic and attitudinal characteristics of individual early in-person and no-excuse absentee voters. These publications include a 2014 chapter in a book published by Cambridge University Press and peer-reviewed articles in *American Politics Research*, *Annual Reviews of Political Science* (2008), *The Journal of Social Issues* (2008), and *PS: Political Science and Politics* (2007). Other published work that discusses the legal and administrative changes to early voting include a 2012 chapter in a book published by Lynn Reiner, a 2008 *William and Mary Law Review* piece, a 2008 chapter in *Democracy in the States*, and a 2008 chapter in *America Votes! A Guide to Election Law and Voting Rights*.
4. I worked as a contractor and subcontractor in 2006 and 2008 for the Federal Election Assistance Commission, helping to oversee the collection, analysis, and reporting of election administration data pertaining to the National Voter Registration Act, the Uniformed Overseas and Citizens Abroad Voting Act, and the Election Day and Voting Administration Survey. I designed the survey questions for early voting used by the American National Election Study (University of Michigan), the nation's most comprehensive academic survey of voting behavior, starting in 2008. I helped rework the section of the Election Assistance Commission's 2008 Election Administration and Voting Survey that inquired about early in-person and absentee ballots. In 2009, my opinion was sought by Ohio Secretary of State Jennifer Brunner regarding the administration of early voting in Ohio.¹ Most recently, I was asked to provide a report on early voting to the bipartisan Presidential Commission on Election Reform and testified on this topic in front of the Commission in Denver, CO on August 8, 2013.² In its report, the Commission recommended that states that do not currently offer early in-person voting consider doing so; my testimony and research are cited in part

¹ Lawrence Norden, March 2008, "Preliminary Report on the 2008 Ohio Elections Summit", available at <http://www.sos.state.oh.us/SOS/Upload/news/eNews/Mar2009/brennanReport.pdf>.

² My testimony is available at <https://www.supportthevoter.gov/files/2013/08/Paul-Gronke-PCEA-Testimony.pdf>.

as the basis of these recommendations.³

5. In 2012, I served as an expert witness in *Florida v. United States*, 885 F. Supp. 2d 299 (D.D.C. 2012), examining the differential use of early in-person voting across racial groups. My testimony was cited approvingly in the court's opinion in that case.⁴ In 2014, I submitted an expert report in *League of Women Voters of North Carolina et al. v. The State of North Carolina*, examining the impact of changes to early in-person voting and same day registration during early in-person voting on different racial groups.
6. I have been retained to respond to the expert reports written by Professors Brunell and McCarty and by Mr. Sean Trende (collectively, the "Defendants' expert reports"). Specifically I have been asked whether they accurately cite the complete body of my scholarship regarding early voting and turnout and more broadly the state of academic research regarding early voting and voting behavior.
7. I am being compensated for my work at the rate of \$275 per hour, the normal schedule that I use for when I am employed as a contractor, subcontractor, or consultant.
8. In this report I address several topics. My conclusions include the following:
 - The use of the term "early voting" in the Defendants' expert reports is frequently imprecise. Much of the literature cited by Defendants uses the term "early voting" to refer both to early in-person (EIP) voting and voting by mail (VBM), without distinguishing between the two. Because there are significant differences, the failure to distinguish between the two renders those materials of limited value in assessing the effect of early in-person voting.
 - The literature concerning early in-person voting and turnout cited in Defendants' expert reports is based on data from 2008 or earlier, with most from 2004 and earlier. Defendants' experts fail to account for significant changes since 2008 in the number of voters who use early voting, and the

³ Presidential Commission on Election Reform, "The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration," Jan. 2014, available at <http://www.supportthevoter.gov/>. See pgs. 3 & 54-57 of the Report.

⁴ See 885 F. Supp. 2d at 322-27.

demographic composition of early voters. Study after study has found that, since 2008, early voting usage has exploded, and that African Americans disproportionately use early voting in many states.

- The literature concerning same-day registration consistently finds that same-day registration is associated with higher turnout. This is true when combined with early voting, and there is no contrary scholarship on this point. Defendants' experts do not mention this fact, limiting their discussion to literature about the effects of early voting *by itself*, and omitting any discussion of the literature finding that early voting and same day registration have a positive impact on turnout when implemented together.
- The literature concerning early voting cited by Defendants' experts largely concerns situations where early voting opportunities are added, rather than eliminated. The difference is critical, because literature that specifically addresses situations where early voting opportunities have been removed suggests that removing such opportunities has had a negative effect on voters.

The Use of the Term "Early Voting" in Defendants' Expert Reports

9. "Early voting" is a term used to encompass at least three distinct forms of election administration and balloting: early in-person voting, no-excuse absentee voting, and full vote by mail. While there are differences in how these systems are administered,⁵ they are sometimes misleadingly referred to generically as "early voting" because they all allow the citizen to cast a ballot prior to Election Day.
10. However, election administrators, the Federal Election Assistance Commission, the Census Bureau, and the scientific community distinguishes between "early in-person" and "absentee by-mail"⁶ voting because these constitute separate administrative regimes, and, importantly, early in-person and no-excuse absentee voting are used at dramatically different rates in different states, different regions, and among distinct segments of the population. I am skeptical of any conclusions based on analyses that lump together "early voting" without

⁵ For a description of the administrative differences, see Paul Gronke, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey, "Convenience Voting," *Annual Review of Political Science* 11 (2008): 437-455.

⁶ Sometimes called "voting by mail" or "no-excuse absentee" voting.

taking into account these distinctions.

11. When evaluating early voting, the Brunell report does not make a distinction between in-person early voting and voting by mail. For example, as evidence of the impact of early voting, Brunell cites articles that examined only absentee voting laws (e.g., Karp and Banducci 2001) and others (e.g., Burden *et al.*) that lump the methods together; only the Gronke et al. (2007) and Giammo and Brox (2010) code the administrative procedures separately. It is a mistake to lump the period of time required to mail a ballot as the same period of time to get to an early voting location.
12. The McCarty report deals correctly with EIP voting, but the citations of the literature are limited and incomplete. The Fitzgerald (2005) piece is out of date insofar as this field has developed, as is my own 2007 co-authored piece that has been superseded by my newer research based on more recent data. Additional peer-reviewed work (listed below) that points to a positive relationship between EIP and turnout remains uncited. McCarty miscites Stein (1998), and uses it to argue that early in-person voters are high propensity voters, and would not drop out if the dates and times of EIP were changed. There are multiple problems here. Later work shows that the demographic patterns evident among early voters in 1994, and throughout most of the 1990s, have largely disappeared as early in-person voting has been adopted by more states and is used by more voters (Gronke and Toffey 2008, Alvarez and Sinclair 2012). Even the Burden et al. 2014 article cited approvingly by McCarty shows that early in-person voters tend to be younger and are more likely to be African-American (see Table 1), not the “highest propensity voters” described by McCarty. McCarty also fails to cite Stein and Garcia-Monet’s (1997) work that showed that, in Texas in 1992 and 1994, early in-person voting attracted new registrants and Hispanic voters—again precisely the opposite of McCarty’s assertion that early voters tend to be high propensity voters.
13. Even limiting our discussion to early in-person voting alone, states that offer in-person early voting vary tremendously in terms of the number of early voting locations or length of time during which early voting is available. In comparing different states’ respective early voting periods, Mr. Trende does not attempt to account for these differences, which are substantial. The Election Assistance Commission’s Election Administration and Voting Survey is one source that describes the substantial variation in how many early voting locations are available in different states (see Table 41, pgs. 78-79 in the 2012 report).⁷

⁷ U.S. Election Assistance Commission, The 2012 Election Administration and Voting

Texas, which offers 12 days of early voting according to Mr. Trende's Figure 1, reported to the EAC that there were 860 non-election office early voting locations in its 254 counties. Nevada, which offers 14 days of early voting, provides 123 non-election office and 13 election office early voting locations for 13 counties. Compare these two states to Oklahoma, a state that provides for just four days of early voting and limits early voting to a single location in each of 77 counties. These are substantial differences, and they are differences that we know are related to different rates of early voting.

Academic Literature Concerning Early Voting and Turnout

14. Early in-person voting and other election reforms such as mail-in voting were put in place by many states in the hopes that voter turnout would increase substantially, but the early results were mixed. In the case of voting by mail, the results were initially less than some of the very optimistic estimates.⁸ Studies reported that early in-person voting reforms have increased turnout modestly, when examined from the 1990s through early 2000s.⁹ The reasons provided are that voting, politics, and political participation are not central to the lives of many Americans.¹⁰ Politics competes with other demands in our busy lives, leading Professors Robert Stein and Greg Vonnahme to describe voting as a "rivalrous"

Survey, available at http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf.

⁸ For example, Oregon secretaries of state regularly claimed that if states adopted Oregon's vote by mail system, their turnout would be boosted by 8-10%. See, e.g., Bill Bradbury, "Vote-By-Mail: The Real Winner is Democracy," *Washington Post*, Jan. 1, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A40032-2004Dec31.html>; Priscilla L. Southwell and Justin I. Burchett, "The Effect of All-Mail Elections on Voter Turnout," *American Politics Research* 28, no. 1 (Jan. 2000): 72-79. Compare to Paul Gronke and Peter Miller, "Voting by Mail and Turnout in Oregon: Revisiting Southwell and Burchett," *American Politics Research* 40, no. 6 (Nov. 2012): 976-997. Of course, all of these articles deal with voting by mail, not early in-person voting.

⁹ See Lilliard E. Richardson, Jr. and Grant W. Neeley, "The Impact of Early Voting on Turnout: The 1994 Elections in Tennessee," *State and Local Government Review* 28, no. 3 (Autumn 1996): 173-179; Grant W. Neeley and Lilliard E. Richardson Jr., "Who is early voting? An individual level examination," *The Social Science Journal* 38, no. 3 (2001): 381-392.

¹⁰ See Michael J. Hanmer, *Discount Voting: Voter Registration Reforms and their Effects* (New York: Cambridge University Press, 2009); William Lyons and John M. Scheb, II, "Early Voting and the Timing of the Vote: Unanticipated Consequences of Electoral Reform," *State & Local Government Review* 31, no. 2 (Spring 1999): 147-152.

activity.¹¹ Furthermore, research has shown that citizens who work, regularly attend religious services, and have higher levels of education and income are more integrated into the political system and are more likely to be mobilized by political organizations.¹² The result is that, based on all the scholarly research up to approximately 2008, the early voter was typically described as: “conservative, middle- to upper-class, generally interested in politics, and Republican.”¹³ Minority use of early voting tended to be quite low, a finding that I and many other scholars attributed to the comparative lower levels of income and educational attainment among minority populations.¹⁴

15. The 2008 Presidential and subsequent elections overturned the conventional wisdom concerning the modest use of early voting. Early in-person voting rates almost doubled from 2004 to 2008, from 7.8% to 14.3% and the high rate of usage continued in 2012. Larger changes occurred among African-American voters. My research in states such as North Carolina and Florida has revealed substantial growth in African-American early voting usage, with African Americans using early voting at higher rates in both states since 2008, including in the 2010 midterm elections.

16. These are absolutely stunning changes in the balloting choices used by voters, and have not escaped scholarly notice, leading many to reconsider previous claims about demographic patterns of early in-person voting, and to evaluate the impact of early in-person and no-excuse absentee voting and other voting reforms at the state level and even lower levels, rather than relying on national estimates. A recent scholarly study of the 2008 Presidential election found that, primarily in Southern states, African-American racial identity was associated with a statistically significant increase in choosing to vote early in-person when

¹¹ Robert M. Stein and Greg Vonnahme, “Engaging the Unengaged Voter: Vote Centers and Voting Turnout,” *Journal of Politics* 70, no. 2 (Apr. 2008): 487-497.

¹² See Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (Cambridge, Mass.: Harvard University Press, 1995); Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation, and Democracy in America* (New York: MacMillan, 1993).

¹³ Gronke et al. 2008, *supra* note 3, at pg. 443.

¹⁴ See Jeffrey A. Karp and Susan A. Banducci, “Going Postal: How All-Mail Elections Influence Turnout,” *Political Behavior* 22, no. 3 (2000): 223-239; Paul Gronke, Eva Galanes-Rosenbaum, and Peter A. Miller, “Early Voting and Turnout,” *PS: Political Science and Politics* 40, no. 4 (Oct. 2007): 639-645; Adam J. Berinsky, “The Perverse Consequences of Electoral Reform in the United States,” *American Politics Research* 33, no. 4 (July 2005): 471-491.

compared to voting absentee or on Election Day.¹⁵ Another study compared racial differences in early in-person, absentee by-mail, and Election Day voting in North Carolina, Georgia, and Florida in 2004, 2006, and 2008, and found rapid growth in the use of early in-person voting among African Americans, and continued higher usage among African-American voters during a 2008 Senate runoff election that was conducted in December 2008.¹⁶

17. I note that there are two articles that offer views that are different from most other findings. First, the aforementioned article by Burden *et al.* (2014) argues that early voting has a slightly negative impact on turnout, but only when implemented in the absence of other reforms (most notably for this case, same-day registration).¹⁷ The Burden *et al.* findings treat “early voting” as a single administrative procedure and voting method, not discriminating between no-excuse absentee or early in-person voting. Second, Larocca and Klemanski (2011), relying on CPS data (like Burden *et al.*) but coding election methods into separate variables, estimate a negative impact of early in-person voting laws on the probability of turnout, averaged across the states.¹⁸

18. It is important to acknowledge these two works, but it is not accurate, in my view, to characterize the literature as finding “very little support” for the idea that “early voting boosts turnout” (McCarty pg. 11). McCarty bases his statements on my own 2007 piece that is based on data from 1980-2004, and the Fitzgerald (2005) article, based on data from 1972-2002. Neither analyzes elections data collected during and after the major boosts in early in-person voting usage after 2008. Moreover, none of the work cited by Defendants’ experts addresses whether different demographic or racial groups may be affected differently by changes to early in-person voting, and recent scholarship has provided some evidence of a

¹⁵ R. Michael Alvarez, Ines Levin, and J. Andrew Sinclair, “Making Voting Easier: Convenience Voting in the 2008 Presidential Election,” *Political Research Quarterly* 65, no. 2 (2012): 248-262. The non-Southern states where African-American identity is statistically associated with a higher probability of voting early in-person are Utah and Ohio.

¹⁶ Peter A. Miller and Neilan S. Chaturvedi, “Get Out the Early Vote: Minority Use of Convenience Voting in 2008,” paper presented at the 2010 annual meeting of the American Political Science Association, Washington, DC.

¹⁷ Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan, “Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform,” *American Journal of Political Science* 58, no. 1 (Jan. 2014): 95-109.

¹⁸ Roger Larocca and John S. Klemanski, “U.S. State Election Reform and Turnout in Presidential Elections,” *State Politics and Policy Quarterly* 11, no. 1 (Mar. 2011): 76-101.

differential impact.¹⁹ Thus, it is not accurate to state, as Brunell does, that “(t)he empirical evidence indicates that early voting has the unintended and unanticipated consequence of reducing turnout” (Brunell p. 3). The only way to sustain these conclusions would be to focus selectively on a few particular works, without making reference to other scholarly sources.

19. With respect to Professor Brunell’s point about early voting and “buyer’s regret,” this is a concern that is commonly raised with respect to early voting, but can be easily put to rest. A decade or more of research on voters who cast a ballot prior to election day shows that the early voter is the decided voter, a voter who tends to be more partisan, more informed, and more committed to the candidate of their choice. Voters do not make a decision to cast an early vote casually; it is only done when they are sufficiently confident in their choice. This has been shown in the American and in the comparative contexts.²⁰

20. And finally, although early voting increases the window for turnout, there is no systematic evidence that compels the conclusion that early voting necessarily increases the costs of campaigns. In fact, research has shown that free media coverage increases with the rise of early voting.²¹ Moreover, while the voter mobilization period under early voting is longer, it need not be more expensive and can be far more efficient, by allowing campaigns to target resources only at those voters who have yet to cast a ballot, and to partition the electorate, focusing early voting mobilization efforts on dependable voters, while redirecting their Election Day mobilization at less dependable, unreliable voters who make up a significantly larger portion of the Election Day electorate.²²

¹⁹ One recent working paper takes issue with Burden, *et al.* on this basis, and concludes, based on more recent data (from the 2012 election), that early voting has been used to successfully mobilize turnout among groups that are historically lower-participation. See Vivekanan Ashok, Daniel Feder, Mary McGrath, and Eitan Hersh, “Dynamic Voting in a Dynamic Campaign: Three Models of Early Voting” (Feb. 26, 2014), *available at* http://www.bu.edu/polisci/files/2010/10/early_vote_v2.6.pdf.

²⁰ Dunaway and Stein (2013) show that the volume and content of campaign news coverage of Senatorial and gubernatorial races was higher in states with early voting periods. See also Paul Gronke & Daniel Krantz Toffey, 2008, “The Psychological and Institutional Determinants of Early Voting,” *Journal of Social Issues* 64(3): 503–524; Patrick Fournier, et al., 2004, “Time-of-voting decision and susceptibility to campaign effects,” *Electoral Studies* 23(4): 661–681.

²¹ Johanna Dunaway & Robert Stein, 2013, “Early Voting and Campaign Coverage,” *Political Communication* 30(2): 278-296.

²² Ashok, et al., 2014, “Dynamic Voting in a Dynamic Campaign: Three Models of Early Voting,” paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL.

The Effect of Same Day Registration

21. It is notable that Burden et al. found that early voting plus same-day registration—comparable to the “golden week” in Ohio—was associated with higher turnout.²³ Indeed, the scholarly consensus on the positive impacts of regimes in which voters can register to vote and cast a ballot on the same day is extensive and long standing.
22. Highton (1997) was among the first to note the substantial impact of same day registration, with turnout 10 percentage points higher than states without Election Day Registration (EDR).²⁴ Hanmer (2009), in an extensive review and analysis of the impact of same-day registration on turnout, compares states that adopted this method as a means to enhance participation and those that adopted it somewhat grudgingly in order to exempt themselves from the National Voter Registration Act. While he discovers the turnout boost is lower among the latter states, it remains statistically significant in all cases.²⁵ Larocca and Klemanski (2011) find that EDR has a positive effect on turnout among citizens who recently moved,²⁶ and McDonald (2008) similarly finds a 2.4 percentage point increase in turnout associated with EDR among recent movers.²⁷ Neiheisel and Burden (2012), in a recent study of Wisconsin, discovered strong and positive effects of EDR on turnout in the state.²⁸ Brians and Grofman, drawing on national CPS data, estimated a 7 percentage point increase in turnout associated with EDR, with the largest impacts among middle-income citizens with high school education, but with nearly as large an impact among less-educated and poorer

²³ *Id.* at 103. See also Paul Gronke and Charles Stewart, 2013, “Early Voting in Florida,” Midwest Political Science Association which shows that reductions in the days and length of the early in-person voting period in Florida differentially impacted African American voters.

²⁴ Benjamin Highton, “Easy Registration and Voter Turnout,” *Journal of Politics* 59, no. 2 (May 1997): 565-575; See also Benjamin Highton, “Voter Registration and Turnout in the United States,” *Perspectives on Politics* 2, no. 3 (Sept. 2004): 507-515.

²⁵ Hanmer 2009, *supra* note 14.

²⁶ Larocca and Klemanski 2011, *supra* note 27.

²⁷ Michael McDonald, “Portable Voter Registration,” *Political Behavior* 30, no. 4 (Dec. 2008): 491-501.

²⁸ Jacob R. Neiheisel and Barry C. Burden, “The Impact of Election Day Registration on Voter Turnout and Election Outcomes,” *American Politics Research* 40, no. 4 (2012): 636-664.

citizens.²⁹ Notably for this report, Brians and Grofman found a large and positive effect on turnout among African Americans, when compared to Whites, and after controlling for education, income, and employment status.³⁰

The Effect of Eliminating Early Voting Opportunities

23. While the findings cited by Defendants' experts attempt to study the effect of adding early voting opportunities, they generally do not purport to address the effect of eliminating voting opportunities, as Ohio is proposing to do. That distinction is important, because even if Defendants' experts were correct that the addition early voting opportunities has a negligible effect on turnout, it is not methodologically sound simply to assume that the removal of those same reforms will have little to no impact on voters in terms of the burdens they face in participating, or on turnout more generally, particularly after voters have become habituated to rely upon these channels of participation.

24. Two recent articles on the racial impact of voting law changes in Florida, one published in the *Election Law Journal (ELJ)*³¹ and the second published in *Political Research Quarterly* are particularly pertinent to the question of how the elimination of early voting may affect African-American voters. In the first, the authors examined the impact of a new Florida law passed in 2011 that truncated the state's early voting period and eliminated voting on the last Sunday before Election Day. The authors reported that "Democratic, African American, Hispanic, younger, and first-time voters were disproportionately likely to vote early in 2008 . . . We expect these types of voters to be disproportionately affected by the recent changes to Florida's voting laws."³² The second article followed up on the initial research conducted in the *ELJ* article. In this second piece, the authors examine the racial and ethnic composition of the early in-person electorate in Florida using voter registration and voter history files. They show that Black early in-person participation dropped by four percentage points as a consequence of the cutback in early voting, while White early in-person participation dropped less than a percentage point. This difference is not due to

²⁹ Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on US Voter Turnout," *Social Science Quarterly* 82, no. 1 (2001): 170-183.

³⁰ *Id.* at Table 1.

³¹ I served as co-editor of the Journal from 2010-2012 and currently serve as sole editor. All articles, including the article cited here, are subject to double-blinded peer review.

³² Michael C. Herron and Daniel A. Smith, "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355," *Election Law Journal* 11, no. 3 (2012): 331.

changing composition of the electorate.³³

25. My own research confirms these findings, in particular a working paper that I co-authored with Professor Charles Stewart that examined in detail the likely impact of shortening the period of early in-person voting in Florida on African-American voters.³⁴ We discovered that reducing the period of time for early in-person voting in Florida did have an impact, and that impact was negative overall. The reduction in the number of days available for early voting may have contributed to high levels of congestion at early-voting locations and very long lines. Early in-person voters in the Sunshine State in 2012 reported line lengths that were 50-100% higher than line lengths reported for corresponding days in 2008.³⁵ Because early voters were disproportionately African-American, African Americans disproportionately bore the burden of these longer lines. Moreover, our research indicated that, after Florida reduced its early voting period, the raw number of individuals who voted early in Florida dropped from 2,663,995 in 2008 to 2,380,196 in 2012, a decline of 10.7%.³⁶ Declines were sharpest among African-American voters.

26. I disagree with McCarty's supposition about the Herron and Smith (2014) results, where he states: "the black share of the electorate ticked slightly upward between 2008 and 2012...(these) findings are evidence against any effects of the changes on black turnout." (Pg. 14). Putting aside the question of whether total turnout is our most important concern, voter turnout is affected by many factors, including the competitiveness of the election, the interest level of the citizens, and demographic characteristics of voters.³⁷ The impact of a change to early voting laws on aggregate turnout will often be swamped by other variables, but that does not mean that changes to the legal regime do not have a separate and independent effect on voters. Among the variables we would have to consider about Florida in 2012: a more competitive presidential race in the state (Obama's margin was 2% in 2008 and .9% in 2012), a competitive Senate race in 2012 but

³³ See Michael C. Herron and Daniel A. Smith, "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election," *Political Research Quarterly* (published online Feb. 24, 2014),

<http://prq.sagepub.com/content/early/2014/02/21/1065912914524831>, at Tables 2 & 3.

³⁴ Paul Gronke and Charles Stewart III, "Early Voting in Florida," paper presented at the 2013 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

³⁵ *Id.* at 26.

³⁶ Gronke and Stewart 2013, *supra* note 31, at pg. 21.

³⁷ See Jan E. Leighley and Jonathan Nagler, 2014, *Who Votes Now* Princeton, NJ: Princeton University Press and Steven E. Rosenstone and John Mark Hansen, 1993, *Mobilization, Participation, and Democracy in America*, New York: Longman.

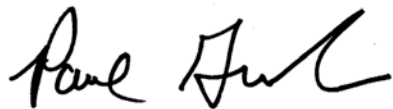
no Senate race in 2008), and 50% more ballot measures--12 in 2012 vs. 8 in 2008. Tolbert and Smith 2002, among others, show that a higher number of ballot measures is positively associated with turnout.³⁸

27. Thus, rather than focusing on aggregate turnout – which is affected by many factors – the best metric of the effect that reductions in early voting have on voters is *early voting usage*. As noted, recent scholarly work focusing on Florida has shown that early voting reductions were followed by a decline in early voting usage, in particular among African Americans.

28. In sum, I know of no empirical argument by which one could conclude that voters will, as a general matter, successfully adjust to the elimination of early voting and same day registration opportunities.

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct to the best of my knowledge.

Paul Gronke
Portland, OR
July 30, 2014

A handwritten signature in black ink, appearing to read "Paul Gronke", with a stylized flourish at the end.

³⁸ On ballot initiatives and turnout, see Caroline Tolbert and Daniel Smith, 2005, "The Educative Effects of Ballot Initiatives on Voter Turnout," *American Politics Research* 33(2). On the relationship of closeness and turnout, see Gary Cox and Michael Munger, 1989, "Closeness, Expenditures, and Turnout in the 1982 House Elections," *American Political Science Review* 83(1).